

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-CV-00329-GKF-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**SUPPLEMENTAL OBJECTIONS AND RESPONSES OF STATE OF OKLAHOMA TO
SEPARATE DEFENDANT COBB-VANTRESS, INC.'S SECOND SET OF
INTERROGATORIES PROPOUNDED TO PLAINTIFFS**

COMES NOW, the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter "the State") and supplements its previous response to Defendant Cobb-Vantress, Inc's Second Set of Interrogatories in accordance with the Court's Order of February 26, 2007 (Dkt #1063). The State incorporates its previous responses and objections to these interrogatories as if fully stated herein. Further, the State reserves the right to supplement its responses as additional responsive information is identified.

Interrogatory No. 3: Please describe in detail all actions or measures which you believe or contend will be necessary to address, ameliorate, or remediate the injury to the IRW which you allege has been caused by the acts or omissions of the defendants in this Lawsuit, and in doing so for each action or measure, state the time period You contend the action or measures will be necessary, the locations of or geographic scope You propose for the implementation of each such action or measure, the estimated cost for each such action or measure. Also please Identify all Documents Related to alleged necessary actions or measures.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO.3

The State objects to this interrogatory on the ground that it improperly seeks identification of “all” items of responsive information, which renders it overly broad and oppressive. It may be impossible to locate “all” items of responsive information to this interrogatory.

The State objects to this interrogatory to the extent that it seeks attorney client and work product protected material, or information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court’s Scheduling Order (Dkt #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports.

The State incorporates its previous response and objections to this interrogatory as if fully stated herein. Subject to and without waiving any general or specific objections, one or more of the following measures, without limitation, may be necessary to address, ameliorate or remediate

injury to the IRW caused by acts or omissions of Defendants. The following measures are illustrative and do not necessarily include all measures required to address, ameliorate or remediate the State's injuries, or all measures required to assess and characterize those injuries and monitor the progress of the steps needed to address, ameliorate or remediate the State's injuries:

1. Cease land application of poultry waste in those areas within the Illinois River Watershed determined to be unsuitable for land application. Areas deemed to be unsuitable for land application include, but not are limited too, those areas which exceed the needed nutrients contained in poultry waste based upon soil testing and / or which have geological, topographical and other natural or man-made factors that make land application a risk to the environment.
2. Limiting land application of poultry waste to areas where there can be no discharge or runoff of poultry waste or pollutants, directly or indirectly, to the waters of the Illinois River Watershed.
3. Creating riparian buffers and field buffers/strips to prevent the discharge or runoff of poultry waste or pollutants, directly or indirectly, to waters of the Illinois River Watershed.
4. Undertaking stream bank stabilization to prevent erosion of soils saturated with poultry waste from running off or discharging, directly or indirectly, to waters of the Illinois River Watershed
5. Hauling poultry litter out of the Illinois River Watershed to be safely disposed of outside the Illinois River Watershed.

6. Undertaking restoration of riparian habitat within the Illinois River Watershed.
7. Undertaking restoration or remediation of those areas determined to be contaminated with excess nutrients and / or other pollutants.
8. Ensuring that poultry waste is safely stored in areas where it cannot leach, runoff or discharge, directly or indirectly into the waters within the Illinois River Watershed or otherwise contaminate the environment.
9. Implementing other measures which may appear necessary as assessment and discovery goes forward.

The "where, when and how" of the implementation of the above and any other measures will be determined in consultation with the State's experts -- a process which is underway but which is not yet completed. Accordingly, the State has not yet determined the cost of implementing any or all of these measures. The State will supplement this interrogatory pursuant to the Court's Scheduling Order [Dkt #1075]. Documents which pertain to this interrogatory, include but are not limited to, the following:

1. *"Demonstrating BMPs to Protect Surface Water Quality from Land Application of Animal Wastes"* U.S. Environmental Protection Agency FY 94 Section 319(h) Task #700, Final Report, Submitted to the Oklahoma Conservation Commission for the U.S. Environmental Protection Agency, by Storm et.al.
http://www.okcc.state.ok.us/WQ/WQ_reports/REPORT057.pdf
2. Beaty Creek 319 Demonstration Project-Oklahoma Conservation Commission- Information relating to Beaty Creek demonstration project were located in OCC WQ Box 10B.

3. Peacheater Creek 319 Demonstration Project-Oklahoma Conservation Commission-
Information relating to Peacheater Creek and the Illinois River monitoring project
were located in OCC WQ Box 10C.
4. Documents relating to 319 projects are found in the Office of the Secretary of the
Environment. These documents are the original grant files between the contracting
agency and EPA. The grant files are located in Boxes 1-6.
5. Coordinated Watershed and Restoration Protection Strategy for Oklahoma's Impaired
Scenic Rivers (Per SB 972) 2002, 2004-2006 Update located at
<http://www.environment.ok.gov/>.
6. Watershed Restoration Strategy for the Illinois River (OCC 1999) located at
https://www.deq.state.ok.us/WQDnew/pubs/illinois_river_wras_final.pdf.
7. Diagnostic and Feasibility Study on Tenkiller Lake, Clean Lakes Report, Oklahoma –
June 1996 located at OSRC 1-30.
8. Basin-Wide Pollution Inventory for the Illinois River Comprehensive Basin
Management Program located at:

(http://www.okcc.state.ok.us/WQ/WQ_reports/REPORT043.pdf).
9. Managing Phosphorus from Animal Manure – F-2249 (OSU) located at

<http://www.osuextra.com>.
10. Soil Phosphorus Levels; Concerns and Recommendations (Univ. of Ark.) located at

<http://www.uaex.edu>.

The State will supplement this list as additional responsive documents are identified.

Interrogatory No. 4:

To the extent the State is seeking to recover damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the acts or omissions of the defendants in this Lawsuit, please:

- (a) Identify all natural resources which You contend have been injured, lost or destroyed to such a degree that the State believes it is entitled to damages for the cost of replacing or restoring such natural resources;
- (b) state all facts which You believe support a claim that the injury to each identified natural resource is of a nature and magnitude sufficient to support a claim for damages to replace or restore each such natural resource;
- (c) provide the amount of estimated costs the State believes would be necessary to replace or restore the natural resource; and
- (d) describe the methodology You have used or intend to use to arrive at an estimate of these costs or damages.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:

The State objects to this interrogatory on the ground that it improperly seeks identification of “all” items of responsive information, which renders it overly broad and oppressive. It may be impossible to locate “all” items of responsive information to this interrogatory.

The State objects to this interrogatory to the extent that it seeks attorney client work product protected material, or information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State will disclose information known or

opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports.

The State incorporates its previous response and objections to this interrogatory as if fully stated herein. Further, the State reserves the right to supplement its response to this interrogatory as the State continues to develop its case and as additional responsive information is identified. Subject to and without waiving its objections, the State responds as follows:

(a) Natural resources which the State contends have injured, lost, or destroyed to such a degree that it believes it is entitled to damages include:

1. Surface Water -- Surface waters contained within the Oklahoma portion of the Illinois River Watershed, including but not limited to the surface waters of the Illinois River, Flint Creek, Baron Fork, Lee Creek, Peacheater Creek, Tyner Creek, Lake Tenkiller and any and all tributaries to the above.
2. Groundwater -- Groundwater contained within the Oklahoma portion of the Illinois River Watershed.
3. Biota -- Biota, including, but not limited to, birds, mammals, fish, and invertebrates, contained within the Oklahoma portion of the Illinois River Watershed.
4. Sediments/River/Stream/Lake Bottoms -- Sediment/river/stream/lake bottoms contained within the Oklahoma portion of the Illinois River Watershed.
5. Land -- Land impacted by poultry waste within the Oklahoma portion of Illinois River Watershed.

(b) The State anticipates that expert reports, to be submitted pursuant this Court's Scheduling Order will support a claim of injury to the above identified natural resources and which is of a nature and magnitude sufficient to support a claim for damages to replace or restore each natural resource:

1. Existing data and new data (produced to Defendants on February 1, 3, and 8 and in subsequent productions) demonstrate that surface waters within the Oklahoma portion of the Illinois River Watershed have been injured in such magnitude sufficient to support a claim of damages. Increased nutrient and bacterial concentrations have resulted in degradation of water quality.
2. Existing data and new data (produced to Defendants on February 1, 3, and 8 and in subsequent productions) demonstrate that groundwaters in the Oklahoma portion of the Illinois River Watershed have been injured in such magnitude sufficient to support a claim of damages. Increased nutrient and bacterial concentrations have resulted degradation of water quality.
3. Existing data and new data (produced to Defendants on February 1, 3, and 8 and in subsequent productions) demonstrate that biota in the Oklahoma portion of the Illinois River Watershed have been injured in such magnitude sufficient to support a claim of damages. Increased nutrient, metal and bacteria levels have effected community structure, decreased fish habitat and affected fish growth and health.
4. Existing data and new data (produced to Defendants on February 1, 3, and 8 and in subsequent productions) demonstrate that sediments/river/stream/lake bottoms in the Oklahoma portion of the Illinois River Watershed have been injured in such magnitude sufficient to support a claim of damages. Bacteria, nutrients and metals

have contaminated the sediments in the Illinois River Watershed and increased nutrient concentrations have affected community structures.

5. Existing data and new data (produced to Defendants on February 1, 3, and 8 and in subsequent productions) demonstrate that land in the Oklahoma portion of the Illinois River Watershed has been injured in such magnitude sufficient to support a claim of damages. Bacteria and nutrients have contaminated the land in the Illinois River Watershed and increased nutrient concentrations have affected contiguous and surface water quality and subsurface groundwater quality.

(c) The State is unable to provide the amount of estimated costs the State believes would be necessary to replace or restore the injured natural resources at this time. The State continues to develop its damages case and will provide Defendants with this information pursuant to the Court's Scheduling Order (Dkt. #1075)

(d) The State will be using established methodologies to arrive at its natural resource damages. Which methodology or methodologies it will ultimately decide to use is work product. The State will disclose this information pursuant to the Court's Scheduling Order when the State provides its expert damages report(s).

The State hereby withdraws its previous Rule 33(d) designation for this interrogatory.

Interrogatory No. 5: Please identify by name or owner, name of operator and address each and every parcel of real property which you contend constitutes a "facility" for purposes of the claims asserted by you under Counts One and Two of the Complaint including those properties where you contend hazardous substances were released or disposed onto or otherwise came to be located (See, Amended Complaint Pa. 70-89).

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5

The State objects to this interrogatory on the ground that it improperly seeks identification of “each” and “every” items of responsive information, which renders it overly broad and oppressive. It may be impossible to locate “each” and “every” items of responsive information to this interrogatory.

The State objects to this interrogatory to the extent that it seeks attorney client or work product protected material, or information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court’s Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports.

The State incorporates its previous response and objections to this interrogatory, as if fully stated herein. In lieu of the State’s previous 33(d) designation to this Interrogatory, the State has identified certain representative documents to this request which include, but are not limited to, the following:

1. Grower files located at the Oklahoma Department of Agriculture Food and Forestry produced to the Defendants on June 15, 2006, Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846. Updated grower files will be produced in accordance with the Courts Order of March 26, 2006 at a yet to be scheduled document production at ODAFF.

2. Documents included in the State's February 1, 3, and 8 document production and subsequent productions. See OK-PL4744-OK-PL5863 and OK-PL4333-OK-PL4743.

Discovery is ongoing. The State reserves the right to supplement its response as additional information is identified.

Interrogatory No. 8: Please identify all assessments, studies or evaluations of alleged environmental or health injuries, threats or endangerments which the State has conducted and for which the State will seek to recover costs from the defendants in this lawsuit.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8

The State objects to this interrogatory on the ground that it improperly seeks identification of "all" items of responsive information, which renders it overly broad and oppressive. It may be impossible to locate "all" items of responsive information to this interrogatory.

The State objects to this interrogatory to the extent that it seeks attorney client or work product protected material, or information known or opinions held by expert consultants retained or specifically employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075) The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports

The State incorporates its previous responses and objections to this interrogatory, as if fully stated herein. Additionally, the State incorporates its previous response and objections to Cobb-Vantress 2nd Set of Interrogatories No. 6, as if fully stated herein. Subject to and without

waiver of its objections, the State is currently conducting an investigation into environmental contamination and adverse health effects resulting from the Defendants' waste disposal practices. The State has developed a comprehensive sampling plan and protocol in order to assess the environmental contamination and increased human health risk resulting from Defendants' waste disposal practices. The State has sampled and continues to sample, media, including but not limited to, surface water, springs, edge of field, sediments, biota, soils, and poultry waste. The State has sampled and analyzed these media for contaminants of concern (phosphorus/phosphorus compounds, nitrogen/nitrogen compounds, arsenic/arsenic compounds, zinc/zinc compounds, copper/copper compounds, bacteria, disinfection byproduct materials and hormones.) The State's experts and consultants are reviewing the above and scientific literature in order to form opinions and draft expert reports regarding Defendants' waste disposal practices and the resulting environmental harm. The State's experts and consultants are reviewing sampling results and scientific literature in order to determine the health risks from the contaminants of concern resulting from defendants' waste disposal practices. The State has produced documents addressed by the Court's January 5, 2007, Order (Dkt #1016) associated with the State's sampling scheme with the February 1, 3, and 8 and subsequent document productions and will continue these productions on a rolling basis. Expert opinions and reports will be produced in accordance with the Court's Scheduling Order (Dkt. #1075). The State will seek recovery of its costs associated with this sampling program and analysis.

The State has also investigated the waste disposal practices of Defendants. The State has attempted to identify and document all poultry houses, waste disposal sites and waste movement. The State has conducted the identification and documentation through trained investigators in the field. The State has produced investigator's notes and sampling data in its February 1, 3 and 8

and subsequent document productions and will continue these productions on a rolling basis. The State will seek recovery of its costs associated with its investigation of identification of poultry houses, waste disposal sites and waste movement.

The State continues to develop its investigation of Defendants' waste disposal practices and the resulting environmental contamination and increased human health risk. The State will seek recovery of costs associated with aspects of the State's investigation of Defendants' waste disposal practices.

The State reserves the right to supplement this interrogatory as additional responsive information is identified.

Interrogatory No. 10: Please identify and describe each applicable or relevant and appropriate ("ARAR") you have met in complying with the National Contingency Plan

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10

The State objects to this interrogatory to the extent that it seeks attorney client or work product protected material, or information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports.

The State further objects to this request as it appears to be premised on the erroneous assumption that the State must comply with the National Contingency Plan as though the State were a private party bringing a cost recovery action. 42 U.S.C. § 9607(a)(4)(B). The State is not

required to follow the National Contingency Plan; rather the State's actions merely must not be *inconsistent* with the National Contingency Plan. 42 U.S.C. § 9607(a)(4)(A).

The State has not yet selected the remedial action(s) for the IRW under CERCLA in response to the contamination and resulting injuries caused by the Defendant's waste disposal practices. ARARs are initially considered in scoping the remedial investigation ("RI")/feasibility study ("FS") stage of the CERCLA remedy selection process. However, they are not finally selected until after completion of RI and during the time of the FS because they are primarily used in the remedy selection process as part of the analysis of remedial action alternatives. The State has not yet completed a RI/FS, and accordingly, the State has not selected any ARARs under CERCLA.

To date, the State is considering the following ARARs for remedy selection:

2 O.S. §§ 20-1, 20-3, 20-10, 10-9.1, 10-9.7, 2-18.1;

27A O.S. §§ 2-6-101, 2-6-102, 2-6-105, 2-6-302, 2-7-103, 2-7-107, 2-7-111, 2-10-102, 2-10-103, 2-10-201, 2-10-402, 2-10-801, and 2-10-801.1;

OAC 35 §§ 17-3-2, 17-3-14, 17-3-20, 17-5-1, and 35:17-5-5;

OAC 785 §§ 45-1-1, 45-1-2, 45-3-2, 45-5-9, 45-5-10, 45-5-10, 45-5-12, 45-5-16, 45-5-16, and 45-5-25;

OAC 252 §§ 205-9-1, 205-9-3, 205-9-5, 515-1-2, 611-1-1, 611-1-6, 611-5-1, 616-11-1, 616-11-2, 616-1-3, 616-11-4, 631-1, 632-3-1, and 631-5-2.

The State reserves the right to supplement this response.

Interrogatory No. 11: Please Identify by date and subject matter, each opportunity for public comment afforded by the State in compliance with the National Contingency Plan

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11

The State objects to this interrogatory to the extent that it seeks attorney client or work product protected material, or information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State will disclose information known or opinions held by expert consultants retained or employed in anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075). The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports.

The State objects to this request as it appears to be premised on the erroneous assumption that the State must afford public comment in compliance with the National Contingency Plan as though the State were a private party bringing a cost recovery action. 40 C.F.R. 300.700. The State is not required to follow the National Contingency Plan with respect to the relief being sought by the State in this litigation, rather the State's actions must be not inconsistent with the National Contingency Plan. 42 U.S.C. § 9607(a)(4)(A).

A State's actions are inconsistent with the National Contingency Plan when the State acts arbitrary and capriciously in choosing a particular response action to respond to a hazardous waste site. United States v. Hardage, 982 F.2d 1436, 1442 (10th Cir. 1992). The State has not yet identified any remedial action(s) under CERCLA for the Illinois River Watershed in response to the contamination and resulting injuries caused by Defendant's waste disposal practices. Accordingly, to date, the State has not provided any opportunity for public comment on any remedy that it may identify under CERCLA. Additionally, without agreeing that public comment is required with regard to any of the State's claims, the State is a public entity and by

the very operation of its being a public body the State has afforded public comment on a number of issues and projects relating to this litigation. For example, see the Illinois River/Baron Fork Watershed Restoration Action Strategy (OCC 1999) https://www.deq.state.ok.us/WQDnew/pubs/illinois_river_wras_final.pdf. The State reserves the right to supplement this interrogatory as responsive information is identified.

Interrogatory No.14: Identify any consent, decrees, agreed judicial or administrative orders, or settlement agreements obtained by you during the three years preceding the lawsuit against or with any person or entity relating to their responsibility for the proper management and disposal of wastes to the IRW. With respect to each provide the full name of the person(s) or entity and the date of the settlement agreement, decrees or order and describe the consideration received in each such settlement agreement decree or order.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14

The following documents have been or will be produced at agency productions. The documents being produced that are responsive to this interrogatory may exceed the three year limitation imposed by this interrogatory because documents were/will be produced as they are kept in the usual course of business. The State will identify at future agency productions documents responsive to this request pursuant to the Court's Order of April 4, 2007 (Dkt # 1118). Pursuant to Fed.R.Civ.P 33(d) the following categories of documents are responsive to this interrogatory:

Oklahoma Department Of Enviromental Quality

1. Legal Division files which contain one or more responsive consent decrees, judicial, administrative orders or settlement agreements were found in Legal Division Boxes 1-7. Included within these files are facilities / respondents which / who are outside the Illinois

River Watershed. This is because the files were pulled as they are kept in the usual course of business and the files are arranged by county, not watershed. See attached list of files by box number with facility / respondent name and case number.

2. The Water Quality Division boxes contain facility permit files. Clip 3 of File 2 of the facility file contains all enforcement orders for a given facility. Water Quality Division Boxes 1-21 contain facility files for public water supplies. Boxes 26-31 contain permit and enforcement files for municipalities. Industrial files are located in Boxes 36-42. The ECLS division contains complaints in Boxes 1-9. See attached list of files by box and facility number for all types of files listed above.
3. Settlement Agreement with Sequoyah Fuels Corporation.
4. Joint Statement of Principles and Actions.

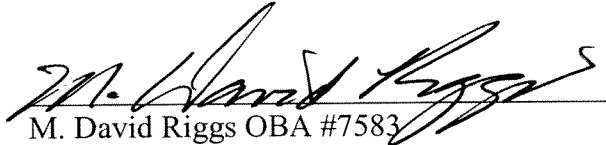
Oklahoma Department Of Agriculture, Food And Forestry

1. Grower files required to be maintained under the Oklahoma Registered Poultry Feeding Operations Act may contain individual notices of violations and enforcement orders in the individual grower's file. These files have already been produced on June 15, 2006, Disc 1, Bates numbers OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846. Updated grower, applicator and CAFO files will be produced in accordance with the Court's Order of March 26, 2006 at a yet to be scheduled document production at ODAFF.

With respect to documents previously provided to the Tyson Defendants for inspection at any of the above agencies that were not copied by the Tyson Defendants, the State will work with the Tyson Defendants to get copies of these documents. The State reserves the right to supplement this interrogatory as additional responsive information is identified.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2007, the foregoing document was mailed to the following, with postage thereon prepaid:

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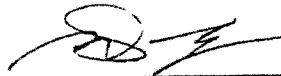
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M. David Riggs

VERIFICATION

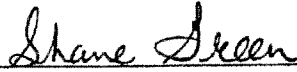
STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Miles Tolbert, being of legal age, hereby depose and state that I have read the foregoing supplemental responses to these interrogatory and that they are true and correct, to the best of my knowledge and belief, and that I furnish such supplemental responses based on consultation with the representatives of the State of Oklahoma based on documents identified as of the date of this response.



Miles Tolbert
Secretary of the Environment
State of Oklahoma

Signed and subscribed to before me on this 27th day of April, 2007



Notary Public

My Commission Expires:

3-9-10

My Commission Number:

06002665

